UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARLOS R. LOTT,

Petitioner,

v.

KENNETH T. McKEE,

Respondent.[1]
_____/

CASE NO. 03-CV-74234-DT
JUDGE PAUL D. BORMAN
MAGISTRATE JUDGE PAUL J. KOMIVES

MEMORANDUM OPINION AND ORDER GRANTING PETITIONER'S MOTION FOR LEAVE TO AMEND

Petitioner Carlos Lott is a state prisoner confined at the Bellamy Creek Correctional Facility in Ionia, Michigan. On October 22, 2003, petitioner filed a *pro se* application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 6, 2005, petitioner filed this motion to amend his habeas application. Petitioner seeks to add a claim that his trial counsel was ineffective for failing to ask questions during *voir dire* to expose potential juror bias.

Rule 15 of the Federal Rules of Civil Procedure, which is applicable to this habeas corpus action, *see Mayle v. Felix*, ___ U.S. ___, ___, ___ S. Ct. ___, ___, 2005 WL 1469153, at *7 (June 23, 2005); 28 U.S.C. § 2242, provides that leave to amend "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). As the Supreme Court has stated, "[i]n the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the

[1]By Order entered this date, Kenneth T. McKee has been substituted for Doug C. Vasbinder as the proper respondent in this action.

movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Respondent has not filed a response to petitioner's motion to amend. Because the motion is unopposed, leave to amend is appropriate. *See United States ex rel. McCoy v. California Medical Review, Inc.*, 723 F. Supp. 1363, 1366 (N.D. Cal. 1989). In particular, the Court notes that petitioner's amended claim does not run afoul of the one year statute of limitations contained in 28 U.S.C. § 2244(d). Under Rule 15, "[a]n amendment of a pleading relates back to the date of the original pleading when . . . the claim . . . asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." FED. R. CIV. P. 15(c)(2). In the habeas context, although not all claims relating to a single conviction meet this standard, relation-back is appropriate where the amended claim "arise[s] from the same core facts as the timely filed claims." *Mayle*, ___ U.S. at ___, ___ S. Ct. at ___, 2005 WL 1469153, at *8. Here, the facts supporting petitioner's ineffective assistance of counsel claim are the same as those supporting the claim that biased jurors were seated, a claim asserted in the original petition. Because "the original and amended petitions state claims that are tied to a common core of operative facts, relation back [is] in order." *Id.* at *12.

Accordingly, it is ORDERED that petitioner's motion for leave to amend his petition is hereby GRANTED. The claim asserted in the petition is addressed in the Report and Recommendation filed on this date. The attention of the parties is drawn to FED. R. CIV. P. 72(a), which provides a period of ten days from the date of this Order within which to file any written

appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1). However, in the absence of a contrary order of the District Judge, the filing of an appeal will not affect the deadlines set forth above.

IT IS SO ORDERED.

s/Paul J. Komives
PAUL J. KOMIVES
UNITED STATES MAGISTRATE JUDGE

Dated: 6/30/05

The undersigned certifies that a copy of the foregoing order was served on the attorneys of record by electronic means or U.S. Mail on June 30, 2005.

s/Eddrey Butts
Case Manager